TRIBAL Council Motion on 6/14/09 TO OPEN

03/05/00 ~~CLOSED SESSION~~ MINUTES

DATE: 03/05/2000

We are going into closed session to discuss the status of Sault Ste Marie with the first case is that they announced wanting to close Victories down earlier, and the second case is they challenged the trust land of allowing gaming to occur on the Victories parcel.

The first case, as you know, is basically removed at this point but it has not been officially dismissed by the District Court. The main issue, if the land had to be in trust first they essentially prevailed on at the preliminary injunction Well as you know the injunction issued that the land is in trust, and that immediately dissolved that injunction, so there is really not much left of that case; but they did have a number of what are called "pretend" claims in that case and that is a long Latin sentence that I can't come close to remembering, but basically in certain kinds of actions, citizens or groups can free things on behalf of the government and therefore they raise these pretend claims, stating that the ITC wasn't assessing a penalty against Victories for this illegal operation and by golly, the Sault tribe can and that they should get that money instead. They also raised some nonsense under the organized crime control act and this and that... I think those aspects of the first case, really, especially with the land being in trust now, just don't have any real legal merit, and I also strongly suspect that today, those tribes that are interested in trying to keep that case alive may be calling their attorneys and having a frank discussion about it, and it would not surprise me that they feel just to can the first case, and they do not know where that leaves Miller-Catfields and Bay Mills is one of their clients, but nonetheless, that case is technically still alive. We have filed a motion to dismiss the remaining claims in the United States that filed similar motion that are currently pending.

Case two, as you know, prevails that Judge Bell made a decision on December 14, 1999 and then the Sault tribe immediately appealed to the 6th Circuit Court of Appeals and asked for an injunction pending appeal, which the Court of Appeals denied right away, but their appeal is still alive, just in the general slow tract course of appeals. Whenever you do appeals, the Court of Appeals has a settlement clerk, where they get everyone together on these conference calls and the job of that settlement clerk is to review their documents and try to get these people to settle their cases. So through discussions with the settlement clerk, it was agreed that the Sault tribe would prepare a proposal to Little Traverse and to the United States, to dismiss both of their cases, the appeal of the second case and the nonsense pretend claims that are still remaining in their first case. They finally did so. It was supposed to be a week before the last meeting, but their attorney, Bruce Green said that he could not get with Bernard and Dan Green until the 21st or something, but at any rate, we now have a proposal in front of us which says that they will dismiss both of their cases, if the tribe and the United States agree that they won't raise in the future, a case of what are called "defenses of collateral estoppels and race jutacotta" so what those things mean, is that the same party cannot get two bites of an apple; if it is the same party suing the same other parties, same issues, our defense would be they do not have a right to be here, they have already litigated this issue; they are

collateral risk factor. So, in return for them dismissing their appeal and their remaining claims in case one, they would want the United States and Little Traverse to say, in some future case. i.e. Mackinaw some day or somewhere else, they could add essentially another bite of the apple. We would not be precluded by arguing that Judge Bell's decision was correct and a good precedent but we would be precluded from arguing that you guys cannot even be in court. I think that is fairly significant in that they caused the tribe all these problems and now they are saying, well, we want to do it again if.....so that is their first thing they are asking for, is that we waive those defenses; at least let them in court and once we are in court we can say that was right and we should dismiss this case, but we can't say they cannot even be in court. Another aspect is that both parties agree that they won't rely on the State Court decision that says the context are not constitutional under state law and not to bring any action of any kind against the other party, challenging the tribal State Gaming contract, be it the Sault tribe or LTBB, and also they agree that they won't support any other entity, which might bring such a challenge, such as the way the Sault tribe initially supported Laura Beard's case in the federal court case in the first place causing all these problems; now they say we won't do any more of that. That part of it is probably okay, except that if, you know, a few years from now, that Judge Bell's decision is upheld by the Michigan Supreme Court and if there is ever any kind of action against Little Traverse; I think one of our arguments would be this violates equal protection, the first set of context are just the same as ours, you just can't come after us. I don't think that we would want to lose our right to at least raise equal protection in defense. The next point that they want is a mutual release; if either party will bring any kind of civil actions against the other party in the future for anything at one time..... sue Barnard for civil extortion or whatever. Now, this one George Forman suggested, after I emailed him my letter, I got an email from him, with some additional suggestions that should probably be coupled with some sort of compensation, as they are asking us to release them from liability, as such the case of Little Traverse or its agents would be liable for anything. At any rate that is another part of the proposal.

The next part is they are asking for a 10-year moratorium on Little Traverse trying to do anything within 25 miles of Mackinaw City. There is a waiver of sovereignty unity to mutual waivers, sovereignty unity to enforce the settled agreement. So it sounds like Jerry sent around a letter that I wrote in response. Where I basically said that "I will take whatever you present to my client, but I don't think that they are going to take this seriously enough, unless there are some changes made. First is that this has to only apply to lands potentially for gaming. We cannot be worrying about them suing for every housing parcel or you know, doctrines, or something like that. Secondly, that there needs to be some sort of positive statement that although we won't use the words collateral estoppel or those Latin words that we cannot even get into court in the first place as Judge Fels's decision is certainly not watered down, as far as its precedential value. It is a well-published decision in the federal court, and this would, in no way, water down a

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Good precedent that they would be at least free to get into federal court and say "no, no Judge Fels was wrong" and here is why.

Thirdly, although it does not appear that the tribe has any immediate plans, and the Mackinaw moratorium probably is not acceptable, because that wasn't something... it was put on the table in our possible settlement idea discussion with 6th Circuit Court settlement clerk and basically talked about this waiver of collateral estoppel sovereignty waiver and race jutacotta concept in lieu of what we were talking about earlier at the time of moratorium in going into Mackinaw or 25 miles of Mackinaw. So after I sent that letter, I did have some follow-up discussion with Bruce Green and just to get an idea of the scruples of people on the other side of this. In the middle of our discussion about my letter, Bruce said. Oh yes, the general consulate of Sault Ste. Marie said to be sure and tell you that "there is an opening in our law department right now". (LAUGHTER) We are in the middle of negotiations and I will pretend that I did not hear that, and by the way, I would rather work as a check-out person at Meijer's. But back to the letter, the first two they did not have a problem with, that it would only apply to land that was potentially for gaming, and that there could be some kind of positive statement, saying that Judge Bell's decision still retains its full precedential value and that we could go to court and try to argue that it is wrong. The third point being the moratorium and they said that they did not want to leave that out, that they would go back to considering some kind of mutual forbearance agreement, where they would not go into Gaylord for an equal amount of time. So that is basically what is on the table now and I guess I need to get a feel for whether there is even any point in continuing these discussions with them, through the 6th Circuit.

Question: What was the comment you made about if we let it go through the appeal process? There is something that I cannot remember...

There are certain advantages to it no matter what the 6th Circuit decision is. Yes, as far as the advantages, yes I think there is a lot of value to letting this go through the appellate process, because Victories parcel is also, as you know, also within the last recognized reservation, which sort of gives us a fall-back position, so a 6th Circuit decision could actually be a useful planting tool to see now, what the court of appeals thinks of the restored land exception because if the tribe were to ever consider a site in Emmet or Charlevoix county, but outside of the 1855-1936 reservation area, you would be relying strictly on the restored land exception, so it might be useful if, at this point, to know if the 6th Circuit of Appeals agree with that exception or not. If they do, and if you ever do have plans to move outside of the boundaries but within Emmet and Charlevoix counties, then it could make it a lot easier to go to banks and that if this has already been through the Court of Appeals. On the other hand, if the Court of Appeals does not think much of the restored land exception, it might be useful to know that now before we start spending money to buy other new parcels. I do think that the tribe doesn't have a whole lot at risk, in just letting the appellate process move forward at this point. As far as the mandatory

trust acquisition in that the statutory language is so strong and I think so well interpreted by Judge Bell, that the chance of the Court of Appeals not agreeing with that, I think, are pretty slim. Even if it did disagree with that, once land is in trust, there is a quiet title act that would make it, hopefully, very difficult; to remove any land from trust once the United States has it. If there is a Court of Appeals case pending, as I said, since the Court of Appeals already denied the request for an injunction pending appeal, there is certainly nothing to prevent the bureau from accepting other parcels into trust and it could maybe a hammer to get them to speed it along. You guys have a green light to do this.

Frank: We have this Court of Appeals decision that is pending. Let's just get on with it right away and get all the land in trust.

So while this is languishing in the Court of Appeals, it could give us a chance to really hammer on the bureau, to try to get the other parcels in trust, to the extent that they can all be paid off, or changed. So I don't see a whole lot of downside to just letting the appeal go forward, but then you say, "nothing is ever certain" and you could get an absolute lunatic appellate panel that could come up with something crazy that could somehow be damaging and could reverse Judge Bell's decision. Like I said even if it did, it is just hard to see how it would change the status quo, at least at Victories.

Question: Would you think with a new change in administration that is bound to happen in November would affect the court's decision?

It shouldn't. I mean, you know Federal Court required court appointments are for life or one close to retirement, if there are new people that would end up in the court; but I don't see how that would really affect it anyway. I mean, Doull was appointed by one of the Republican presidents and is very conservative, but the law is the law. I think most judges; you know I don't see this as necessarily being a kind of conservative political issue, like an abortion rights case or something where there might be a more political test with judges. I see this more as, for most judges that this is a straight academic exercise. You know with even new administrations, whoever ends up big, not having any immediate effect on the 6th Circuit Court of Appeals anyway. The only advantage I guess to settling this is that there are just not any questions then for the time being, on both cases, and Judge Bell's decision is still there on the books.

Council Member: Well I think we should stay the course, and just let the court system say what is final and settle. You know they always have something...

Yes, basically, in similar deals, and what they come up within 12 hours before Judge Bell's opinion came out, that you rejected. I know that we have a stronger opinion and they are still coming back with the same, well, actually with a double deal, that they want you guys to stop the land deal with the moratorium and going elsewhere; because the only hammer they have is that they got this appeal. Basically you never know what will happen, so this gets you through both cases.

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Council Member: Well I am, also, of the opinion that we go through the court process, because, at least, it sounds like, the way you described it, is a "win-win" situation for us. At least, we know in the end, whichever way it goes, whether or not we should proceed with any further developments.

Yes, especially if we can get a bunch more parcels into trust before the Court of Appeals rules and if we lost on both issues, it really wouldn't be really that damaging. Like I said, as far as the restored land exception, it would be good to know now what the Court of Appeals thinks of that.

Question: What does everybody else think?

Council Member: Well, when I got the letter, I thought we should wait. Just let them go to the courts, win again.

Council Member: I agree, but I think we should do it by motion not to accept a settlement offer.

Council Member: Not to accept this particular settlement. We could come up with something, tell them to come up with an offer we can't refuse.

I think it would be perfectly reasonable, if they would like another bite of the apple someday, to at least offer to cover two months of lost gross revenue that was caused by this second suit.

Council Member: So at this point we are rejecting this offer, but if they were to come up with a counter offer, it is not to say that we would not address it again at council.

Should I indicate that the tribe might consider something like that, or just say let's just stick to the original schedule and go through it, and if they want to come back with something else, they can.

Council Member: Okay, my motion is to not accept a settlement offer at this time, with the Sault Ste Marie tribe. I think at this time, don't make an offer; if they read between the lines, they will see that there is always an opportunity, but we won't state that opportunity, any time before a final decision, unless they present a proposal.

I am sure they will. I think that covers that pretty good.

Council Member: Okay, all those in favor say aye "aye, opposed. Motion carries.

I think that covers that pretty good.

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Council Member: A motion to go out of closed session. Support.

Council Member: All those in favor, say aye, "aye, opposed. The motion carries. We are now back in open session.